IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/03/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.7407 OF 2003
AND
WPMP.NO.9544 OF 2003

Tvl. City Tower Hotels (P) Ltd.,
No.148, Wall Tax road,
Chennai 600 003. .. Petitioner

-Vs-

1. The Commercial Tax Officer,
Moore Market (North)
Assessment Circle,
No.191, N.S.C. Bose Road,
Chennai 2.

2. The Commercial Tax Officer,
Park Town II Assessment Circle,
Chennai.

3. The Assistant Commissioner,
Zone III, Greams Road,
Chennai 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.R. Senniappan

For Respondent : Mr.Manoharan Sundaram
Government Advocate

:J U D G M E N T

The petitioner has prayed for issuing a Writ of Mandamus directing the first respondent to consider and pass order on the letter dated 18 .9.2002 and 9.10.2002 in accordance with the decision of the High Court in (2002) 127 STC 504.

2. Even if the prayer appears to be innocuous and prima facie there is no difficulty in giving a direction to the first respondent to consider the

letter and pass orders, in view of the contentions raised by both the counsels appearing for the parties and particularly the counsel appearing for the respondents, it is necessary to delve into the matter in some detail.

3. The petitioner had earlier filed W.P.No.35465 of 2002 for issuing a Writ of Mandamus directing the respondent to issue C forms as per the various letters of request. The said writ petition was disposed of on 13.9.2002 with a direction to the respondent to consider the representations and to take appropriate action in accordance with law within one week from the date of receipt of the order. Thereafter on 18.9.2002, the petitioner requested the first respondent to pass orders within one week and to issue at least 3 numbers of declarations in Form C, pending disposal of the said representation. It is submitted by the petitioner that the first respondent instead of passing any order as per the direction of the High Court in W.P.No.35465 of 2002, issued notice in Rc.No.2387/2002 dated 30.9.2002 calling for objections from the petitioner. Soon thereafter, the petitioner submitted reply dated 9.10.2002 and requested the first respondent to comply with the direction of the High Court. It is the grievance of the petitioner that neither the direction of the High Court has been complied with nor C form declarations have been granted. It is stated that at this stage the petitioner made a representation in person before the third respondent and requested to give suitable direction to the first respondent. It is stated that the third respondent advised the petitioner to meet the first respondent to obtain requisite C form declarations and thereafter the petitioner was told by the first respondent that entire assessment records have been sent to the second respondent and the petitioner was therefore advised to contact the second respondent for the grant of C forms. It is the further grievance of the petitioner that neither the first respondent nor the second respondent has passed any order.

4. The counsel for the respondents has submitted that since the petitioner was the proprietor of a hotel, □C□ forms are not at all required to be given to the petitioner.

5. In W.P.Nos.1379 and 1380 of 1967 and 840 of 1971, a Division Bench of this Court by order dated 27.4.1971 observed as follows :-

□ . . . There is no provision in the Act which authorised the Commercial Tax Officer to refuse to provide the assessee with C forms. If the assessee misused the C form, that will be punishable under section 10 of the Central Act. Beyond that, it had no effect, not even in tax. The Commercial Tax Officer was not constituted as a policeman to regulate and conduct the assessee along with virtuous path. If the assessee had registered himself under the provisions of the Central Act, he was, as a matter of right, entitled to get C forms from the officer, who had no authority to refuse the same. . . .□

6. The aforesaid decision was followed in the subsequent decision reported in (1986)61 STC 335 (CHANDA PAINTS (MADRAS) LTD. v. COMMERCIAL TAX OFFICER, ROYAPETTAH ASSESSMENT CIRCLE, MADRAS-5).

7. In (1998) 109 STC 625 (A.P. GAS POWER CORPORATION LTD. v. ASSISTANT COMMERCIAL TAX OFFICER) after referring to relevant provisions, it was observed :

" . . . Thus from the reading of the above provisions it is clear that at the stage of issuing of "C" declaration form, the notified authority is not required to conduct an enquiry into the nature of the transaction and as to whether the petitioner needs the forms for use in the course of inter-State trade or for avoidance of payment of tax which he would be liable to pay. The authorities will, however, be at liberty to make such an enquiry as it is necessary to see whether C forms have been properly issued and if not what is the liability of the parties under the APGST or CST Act, as the case may be. Such an enquiry need not be made at the stage of issuance of C form. What all is required under rule 9 of the said Rules is :

(1) Whether the person applied for C form is a registered dealer;

(2) whether the goods in respect of which C form is used are included in the certificate of registration form "A"; and

(3) whether he has paid the amount for the C form and produced necessary challan in proof of the payment;

When these requirements are satisfied, C form has to be issued."

8. In 1992 (85) STC 422(Mad.) (LARSEN & TOUBRO LIMITED v. COMMERCIAL TAX OFFICER) it was observed as follows:

" . . . in my view, the petitioners are entitled to have themselves registered as dealers under section 7(2) and consequently are entitled to the supply of "C" forms for use in their purchase of goods in the course of inter-State sale or trade or commerce at the concessional rate. The further question whether the goods have been rightly purchased for any one of the approved and permitted purposes and whether there was sufficient compliance or non-compliance or violation of the terms of the registration certificate or as to whether the "C" forms issued have been misused by the registered dealer shall be considered only at the subsequent and appropriate stage and in accordance with section 10-A of the Central Sales Tax Act and it would be not only premature but inappropriate to enter into an enquiry postulated under section 10-A even at the stage of issue or the supply of "C" forms."

9. Following many of these aforesaid decisions, in (2002)127 STC 50 4 (QUALITY ENTERPRISES v. ADDITIONAL DEPUTY COMMERCIAL TAX OFFICER), it was observed :

" . . . 8. From the decisions of this Court and the Supreme Court, it is clear that for issuance of "C" forms, the only conditions that are to be satisfied are that the person claiming "C" form is a registered dealer and that the charges for "C" form were paid and that he produced the challans in proof of having paid the amount for obtaining the "C" form. Once these conditions are satisfied, the authorities are bound to issue "C" form.

Whether the C forms are properly used or misused, cannot be enquired into at the initial stage of issuance of C forms. If any person misused the C form, he is liable to the penalties as contemplated under the Act. Therefore, the authorities which issue C forms have to issue the forms, once they satisfy the above conditions. Therefore, the rejection of the request by the respondent is not justifiable. Under the relevant provisions of law, the petitioner is entitled for 25 C forms, at a time. The petitioner is entitled to get the forms, in accordance with that rule 15(2).

10. A reading of the aforesaid decisions would amply make it clear that mere apprehension that a person applying for C forms is likely to misuse such C forms is never considered as a ground for rejection of the application. In the subsequent letters, the petitioner had referred to the above decisions and yet no action has been taken by the authorities.

11. For the aforesaid reasons, the writ petition is allowed and the first respondent is directed to deal with the letter of request dated 18.9.2002 and pass necessary orders in accordance with law, particularly keeping in view the observations made in various decisions referred to above, within a period of seven days from the date of communication of this order. Even if the obdurate attitude of the respondents calls for imposition of cost, I desist from doing so. Consequently, WPMP.No.9544 of 2003 is closed.

Index : Yes
Internet : Yes
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To

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